

Exhibit B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
Case No. 23-11131 (TMH)
AMYRIS, INC., et al., .
(Jointly Administered)
Debtors. . Courtroom No. 4
824 Market Street
Wilmington, Delaware 19801
Thursday, September 7, 2023
11:00 a.m.

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE THOMAS M. HORAN
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

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Enter Into Reimbursement Agreements with
Professionals for the Ad Hoc Noteholder Group
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1 (Proceedings commenced at 11:00 a.m.)

2 THE COURT: Good morning, counsel. This is Judge
3 Horan. We're on the record in Amyris, Inc., Case
4 Number 23-11131.

5 I'll turn it over to Mr. O'Neill.

6 Good morning.

7 MR. JAMES O'NEILL: Good morning, Your Honor.

8 James O'Neill of Pachulski Stang Ziehl & Jones
9 today, appearing on behalf of the Debtors, Amyris.

10 First, thank you very much for scheduling our
11 hearing for today. We certainly appreciate the Court's
12 accommodation.

13 There's one matter on the agenda for today; that's
14 the Debtors' emergency motion to assume and/or enter into
15 reimbursement agreements for professionals with the Ad Hoc
16 Noteholder Group, and my partner Steve Golden is going to be
17 presenting the motion today on behalf of the Debtors.

18 THE COURT: Good morning, Mr. Golden.

19 And just before you get started, I'm just going to
20 remind the parties to keep your cameras off unless you are
21 speaking to the Court or are asking for the opportunity to
22 address the Court, okay. Thank you.

23 Mr. Golden, good morning. Good to see you, sir.

24 MR. GOLDEN: Good morning, Your Honor. Steve
25 Golden, Pachulski Stang Ziehl & Jones, on behalf of the

1 Debtors.

2 And, Your Honor, I want to, again, repeat what my
3 partner Mr. O'Neill said and thank Your Honor and your staff
4 for being prepared to accommodate us last week for this and
5 also being willing to have the hearing today and reschedule
6 it, I believe, to accommodate the newly formed Committee, who
7 is drinking from -- I think we always saying, "drinking from
8 a firehose" -- I think they're drinking from several
9 firehoses in this case. But we have been trying -- we've
10 been working with them nonstop and we're pleased to
11 announce -- I don't want to steal their thunder -- that the
12 additional time has borne fruit, because the Committee, as I
13 understand it, does support the motion before Your Honor
14 today.

15 Your Honor, before, you know, getting into the
16 meat of everything here, I do want to note a couple of other
17 folks who are here with us today in the virtual courtroom.
18 In addition to, of course, Mr. O'Neill and Ms. Grassgreen, my
19 partners at Pachulski, Doris Choi, the general counsel, is
20 on, as well, and Han -- I thought I saw him -- Han
21 Kieftenbeld, our interim CEO is on. And Mr. Gund, our chief
22 restructuring officer, is on.

23 And, Your Honor, Mr. Gund is our declarant. And
24 the reason I wanted to mention this up front, Mr. Gund, he's
25 actually in Europe with several of the Debtors' advisors and

1 Mr. Kieftenbeld, in negotiations with our commercial
2 counterparties.

3 He is apparently one of the -- he just called me
4 before this hearing -- one of the meetings ran a little bit
5 late, so he is taking the train. So I just wanted to let the
6 Court and everybody else know in the event that there are any
7 questions for him or if he's called upon, if there's any
8 slight delay or he does drop, he will be coming back on.
9 This is a technical issue that we're hopeful will not happen,
10 but want to be up front with the Court about that.

11 THE COURT: Thank you for letting me know,
12 Mr. Golden.

13 MR. GOLDEN: You're very welcome, Your Honor.

14 And thank you, Mr. Gund, for letting us know.

15 Your Honor, this is, as Mr. O'Neill said, the
16 Debtors seek to assume and/or enter into these reimbursement
17 agreements with the advisors to the Ad Hoc Noteholders Group.
18 This is a group that represents at least 65 percent of the
19 Debtors' total \$690 million in principal of notes, which is
20 the single largest creditor constituency in this case. And
21 we seek to do that pursuant to Sections 363 and/or 365 of the
22 Bankruptcy Code.

23 The motion was filed at Docket 148. The sole
24 objection was from the United States Trustee at 178. And
25 there were two replies from the Debtors at 182 and then the

1 Noteholder Group themselves at 184. And, Your Honor, as I
2 just said, I will let them speak for themselves if they
3 desire to do so, but my understanding is both, the Committee
4 and the DIP lender, support the motion.

5 Your Honor, unless you'd like to proceed in a
6 different fashion, given the need to be expedient here, I
7 would propose to be efficient by beginning with the
8 evidentiary portion and then moving on to brief arguments
9 from the parties and the evidentiary portion, of course,
10 Mr. Gund's declaration and any cross-examination desired
11 (indiscernible).

12 THE COURT: That's exactly how I would like to do
13 it.

14 Thank you, Mr. Golden.

15 MR. GOLDEN: You're very welcome, Your Honor. I
16 like it when I'm thinking the same way as the Court.

17 So with that, I would move the declaration of
18 Philip J. Gund, which was Docket 148-2, as Exhibit B to the
19 motion, into evidence as his direct testimony. As I said, he
20 is available, albeit, on a train for cross-examination,
21 should there be any.

22 THE COURT: Does anybody object to the admission
23 of Mr. Gund's declaration in support of the motion this
24 morning?

25 MR. SCHANNE: Good morning, Your Honor.

1 Can you hear me okay?

2 THE COURT: I can hear you, Mr. Schanne.

3 Good morning.

4 MR. SCHANNE: May I please the Court? John
5 Schanne on behalf of the UST.

6 We have no objection to submission of the
7 declaration and we do not intend to cross-examine.

8 THE COURT: Okay. Thank you, Mr. Schanne.

9 Mr. Gund's declaration is admitted into evidence.

10 (Gund Declaration received in evidence)

11 THE COURT: Is there anybody else who might wish
12 to cross-examine Mr. Gund?

13 (No verbal response)

14 THE COURT: Okay. I hear no response.

15 MR. GOLDEN: Thank you, Your Honor.

16 So, Your Honor, as I said at the outset, the
17 Debtors seek to enter into and/or assume the three
18 reimbursement agreements: one with each of the Noteholder
19 Group's professionals under 363(b) and 365(a) of the
20 Bankruptcy Code, which, as set forth in our motion and our
21 reply, are the well-established -- is the correct provision
22 of the Bankruptcy Code under which this relief should be
23 sought.

24 And, Your Honor, we certainly, as I'm sure you've
25 read the cases that we have cited to, there are a number of

1 cases that have considered this issue and have come to the
2 same conclusions as the Debtors espouse here, including
3 Mallinckrodt and Bethlehem Steel and Purdue and others, which
4 is that 363 and 365 are the correct provisions, and it's a
5 question of, is this, indeed, the Debtors' business judgment?

6 And, Your Honor, here, the uncontested evidence,
7 as established through Mr. Gund's declaration, is that this
8 is a clear exercise, and a proper exercise, of the Debtors'
9 business judgment.

10 And just to hit a couple of the high points for
11 the Court, as of the date the motion was filed, the Ad Hoc
12 Group represented at least 65 percent of the holders of the
13 Debtors' convertible notes, which is the single largest
14 creditor constituency -- \$690 million of notes.

15 The Debtors are working around the clock in a very
16 short period of time, literally traveling around the world
17 right now to work towards a consensual plan of reorganization
18 and to reach consensus on the terms of a Chapter 11 plan.
19 And it's really critical in furtherance of that to reach
20 alignment with the largest creditor constituency, the
21 Noteholders.

22 The Noteholders, as their -- I believe it's a 2019
23 statement -- says, there are more than one of them; there are
24 many of them. And having to engage in those negotiations
25 with the fragmented body would be far more difficult, less

1 efficient, and more costly, and would jeopardize the Debtors'
2 ability to reach consensus in this period of time. And
3 having this organized group of noteholders represented by
4 very competent professionals, including the Paul Hastings
5 firm and Blank Rome and BRG, is really essential. We've been
6 engaging with them regularly and they are top-notch
7 professionals that are working to represent the interests of
8 their client in furtherance, again, of our shared goals here.

9 So, again, Your Honor, the Debtors' business
10 judgment, paying the reasonable and documented fees and
11 expenses of the Noteholder Group professionals up to the cap,
12 and subject to the procedures that are contained in the
13 proposed order, are in the best interests of the Debtors'
14 estates.

15 I note now, Your Honor, that one of the things
16 that the Committee asked for, and this is reflected in the
17 proposed order -- and at the appropriate time, we can go
18 through them specifically -- but the Committee added even
19 more additional guardrails as to the process to ensure that
20 people know what's going on, what the Noteholder Group has
21 done, what they're seeking to compensate their professionals
22 for, what they're seeking to have us compensate their
23 professionals for pursuant to the reimbursement agreements.
24 And the Debtors were happy to accommodate that request; we
25 think it's absolutely proper.

1 And, Your Honor, the sole objection, here,
2 obviously, is from the United States Trustee. And, really,
3 it rests on, you know, as Your Honor has read, the idea
4 that 503(b) is the only -- is the proper avenue to seek this
5 relief, and, Your Honor, the Debtors respectfully disagree
6 with that.

7 And I note that, really, it -- the UST's argument
8 relies on this -- the canon of statutory construction that --
9 in Latin, I will not attempt to pronounce it, but I will do
10 it in English -- which is the general specific canon. I
11 won't mess that up. I wrote it down here, Your Honor, and
12 I'm looking at it and it's making my heart palpitate. But
13 it's the general specific canon and -- which is that a
14 specific statute controls over a more general statute.

15 And, Your Honor, I think that what the Court said
16 in Mallinckrodt, what Judge Stark said, really, is
17 instructive as to why there, that canon really doesn't apply.
18 Because that canon generally applies, as articulated in
19 RadLAX, when you're trying to address a contradiction between
20 statutes or superfluidity as between two statutes.

21 And as the Debtors said in their reply, there's
22 another canon, the harmonious-reading canon, which is, of
23 course, whenever possible should read the provisions together
24 in harmony.

25 And here, as Judge Stark said in Mallinckrodt,

1 Sections 363(b) and 365(a) on one hand and 503(b) on the
2 other, are directed at different parties, operating at
3 different times, and serve different purposes.

4 And we -- that's absolutely correct: 363 and 365
5 concern actions by a Debtor; whereas, 503(b) concerns actions
6 by a creditor. 363 and 365 concern ongoing or prospective
7 relief; whereas, 503(b) is retrospective.

8 So, here, Your Honor, because 503(b) does not
9 apply, nor does the substantial contribution standard, it's
10 about was the entry, or is our request in the Debtors'
11 business judgment? And as discussed earlier, we believe that
12 the uncontroverted evidence is that it has.

13 So, Your Honor, I'm reserving the right to respond
14 to any counter-arguments that are made by any party. The
15 Debtors would respectfully request the Court enter the order,
16 as a sound exercise of the Debtors' business judgment and in
17 the best interests of their estates, pursuant to Sections 363
18 and 365 of the Bankruptcy Code.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Before I hear from Mr. Schanne, I'd ask if there's
22 anybody who wishes to be heard in support of the motion?

23 (No verbal response)

24 THE COURT: Mr. O'Neill?

25 MR. ANDREW O'NEILL: Thank you, Your Honor.

1 Andrew O'Neill of White & Case, proposed counsel for the
2 Unsecured Creditors Committee.

3 Good morning, Your Honor, and thank you, again.
4 As Mr. Golden noted, the scheduling change was because of us.
5 We needed just a bit more time to look at things, to
6 consider, and react to the relief as far as today.

7 He did steal my thunder a little bit. We are
8 going to support the motion, but just backing up a little
9 bit, as Your Honor knows from first day papers in these
10 cases, this is a complicated case and a complex business for
11 sure. And we are, along with FTI as financial advisor, and
12 Jefferies as investment banker, and Potter Anderson as co-
13 counsel to the Committee's other proposed advisors, getting
14 up to speed as quickly as possible.

15 The firehose line has been used a lot. Kind of an
16 unfortunate evocation, but we've certainly been working very
17 hard and trying to digest all the information.

18 And on that note, I would like to thank the
19 Debtors' advisors for making -- and the Debtors themselves --
20 for making a wealth of information available to us and
21 working very hard to get us up to speed, including over the
22 holiday weekend. We still have a ways to go, but they've
23 been very constructive in that process.

24 We are very deep in working through the second
25 days, and depending on how that goes, we'll plan to provide a

1 more fulsome update from the Committee's view on these cases
2 and going forward at that hearing.

3 For today, this was obviously one of the first
4 things we needed to wrap our heads around because of the
5 immediacy of the hearing. Without belaboring the points
6 already made by counsel, and we agree with those points, we
7 got comfortable with this reimbursement after negotiating a
8 few tweaks to the order, because we do think the Ad Hoc Group
9 can be a material and constructive part of this process.

10 We've already had several discussions with counsel
11 and with BRG and we will continue to engage on the direction
12 of these cases; not in a repetitive way or a way that
13 duplicates efforts, but in a way that advances the plan and
14 sale processes.

15 Mr. Golden did note that we negotiated a few
16 tweaks to the order. We think they're important and we think
17 that with these tweaks, the order works and the terms of the
18 reimbursement work.

19 The first was not to duplicate the Committee's
20 work. You know, we obviously have a large mandate on behalf
21 of all unsecured creditors. The Ad Hoc Group represents the
22 bondholders. So we're going to work to not duplicate those
23 efforts and we wanted some language in the order to that
24 effect.

25 Secondly, we want an invoice with time entries,

1 not just the one-pager, as you'll sometimes see with the
2 dollar amount. So the Ad Hoc Group did agree to that,
3 subject to redactions for privilege. But we think that's a
4 material improvement.

5 And then, finally, from a timing perspective,
6 instead of the 5 business days that was proposed, we now
7 have 10 days to object to any invoice and 10 days to object
8 to any amendment for modification of the agreement.

9 So with those changes, and with all the reasons
10 set forth by Debtors' counsel and what I just said on the
11 record, we support the motion.

12 That's all I have, Your Honor. So, unless you
13 have any questions, we'd like to see the motion approved.

14 THE COURT: Thank you, Mr. O'Neill.

15 I don't have any questions.

16 MR. ANDREW O'NEILL: Thank you.

17 THE COURT: Mr. Merola, good morning.

18 MR. MEROLA: Your Honor, Frank Merola of Paul
19 Hastings, on behalf of the Ad Hoc Group.

20 Your Honor, on behalf of the Ad Hoc Group, we
21 negotiated this reimbursement agreement initially with the
22 Debtor prepetition. We created additional limitations and
23 guardrails for the benefit of the DIP lenders post-petition.
24 And then, finally, we accommodated the Committee's concerns
25 in granting additional time and making modifications to the

1 order.

2 The undisputed evidence in the Gund declaration
3 indicates this is in the best business judgment of the
4 Debtors and, moreover, all of the economic parties in
5 interest in this case concur and support the motion.

6 We would request the entry of the order and we'll
7 stand by to respond to any comments by the UST.

8 THE COURT: Thank you, Mr. Merola.

9 Is there anybody else who'd like to be heard in
10 support of the motion?

11 (No verbal response)

12 THE COURT: Okay. I hear no response.

13 Mr. Schanne, I'd like to hear from you, please.

14 MR. SCHANNE: Thank you, Your Honor.

15 For the record, and may I please the Court? John
16 Schanne, on behalf of the UST.

17 Your Honor, the Bankruptcy Code provides two ways
18 for a professional to be paid from the estate. First,
19 professionals employed under Sections 327 and 1103 are paid
20 under Section 503(b)(2), which grants administrative priority
21 to fees and expenses awarded under Section 330. Second,
22 other professionals that are paid, if at all, under
23 Section 503(b)(4), which permits the award of reasonable
24 compensation to attorneys or accountants of entities who make
25 a substantial contribution to the bankruptcy case in the

1 specified ways. Both provisions contain important
2 limitations on the fees and expenses a professional may
3 receive.

4 The first way, under Section 503(b)(2), is
5 inapplicable here because these professionals do not work for
6 the Debtors or an official committee, so that leaves the
7 second way, 503(b)(4), which allows for the payment of
8 professionals and creditors who perform certain services,
9 only one of which is potentially applicable here, the sole
10 and specific authority to the estates to pay the legal fees
11 and expenses of the Ad Hoc Noteholder Group,
12 Section 503(b)(4) and 503(b)(3)(D), which require the making
13 of a substantial contribution.

14 It's impossible to know at this time whether that
15 will, in fact, occur, so the motion is premature and should
16 be denied at this point. Although the motion relies on
17 Sections 105(a), 363, 365 as authority to pay the fees, the
18 general provisions of the Bankruptcy Code cannot be used to
19 evade the specific provisions of 503(b).

20 Moreover, and you heard it in the presentation,
21 invoking 105(a), 363, and 365 as authority, lowers the burden
22 under that which is specifically set forth in the Code, which
23 is the specifically crafted substantial contribution
24 standard. And that ruling would undermine Section 503,
25 because it creates two entirely different standards for the

1 payment of administrative expenses and it depends on whether
2 the Debtors align with the applicant or not.

3 If the Debtor does not support the request, the
4 request is governed by Section 503; however, if the Debtor
5 does support the request, 503 somehow becomes a nullity. An
6 administrative claim gets approved under the relaxed business
7 judgment standard, rather than the standard required under
8 the Code.

9 Such disparate standard of review is not in
10 accordance with the statutory framework. This is especially
11 problematic for professional fees, right. The Debtors cannot
12 use 105, 363, and 365 to evade 503(b)(2), which incorporates
13 the protections of 330, 327, or 2014, as the payments of the
14 Debtors' own professionals, there's no authority to
15 nullify 503(b) when paying the professionals of other
16 parties.

17 And, finally, the Ad Hoc Noteholder Group consists
18 of creditors holding unsecured claims. There are unsecured
19 creditors that are not noteholders. There are noteholders
20 that are not part of that Ad Hoc Group.

21 So although the motion contemplates payments to
22 the professionals of the group, the payment would relieve the
23 members themselves of the obligation to pay their
24 professionals. This is properly considered a distribution to
25 the members of the Ad Hoc Group and that raises the question

1 of whether payment of the fees would violate
2 Section 1123(a)(4), which mandates that a plan provide the
3 same treatment to all members of a particular class. Here,
4 the Ad Hoc Noteholder Group would be receiving a distribution
5 not made to other unsecured creditors and without satisfying
6 the necessary finding of a substantial contribution.

7 So, in sum, 503(b)(3) and (b)(4) control. They do
8 not allow for the payment of these professional fees on an
9 emergency basis at this stage of these cases.

10 The Bankruptcy Code (indiscernible) a priority.
11 It's binding and it protects both, the creditors and the
12 Debtors, and should not be altered here.

13 So unless the Court has any questions, we thank
14 you for your time and careful consideration.

15 THE COURT: Thank you, Mr. Schanne.

16 I don't have any questions.

17 Mr. Golden, would you like to be heard?

18 MR. GOLDEN: Apologies, Your Honor. My clicker
19 was not working. Just very briefly, Your Honor. I'll take
20 the statements made by Mr. Schanne just briefly in reverse.

21 I don't recall in the United States Trustee's
22 papers there being an argument regarding, you know, a
23 violation of the distribution standards. I don't see any
24 such thing here. We are not -- this is not a plan, so I
25 don't know how 1123 even comes into play.

1 But, in any event, going to really the first
2 point, this is not a lower standard. It's a different
3 standard. And I think that the Court in Mallinckrodt really
4 did kind of hit this point home, noting that it's sensible
5 that there are different standards for relief for something
6 that a Debtor is seeking to do because the Debtor is a
7 fiduciary for the estate, and what a creditor is seeking to
8 do.

9 And so, here, this standard, because the Debtor is
10 seeking to do something we believe in our business judgment,
11 this is in the best interests of the estate. It is, as I
12 said, it is critical that we have the continued engagement of
13 the Noteholders, and so that's why we've moved it.

14 This is not a common thing. You don't normally
15 see Debtors going out and saying, We'd love to, you know, do
16 this sort of thing. It's when it's necessary to the process,
17 and we believe it's absolutely essential for the process
18 here, which is why we, as the Debtors, have moved for it.

19 So in that regard, Your Honor, the burden is on us
20 under Sections 363 and 365 to prove that it is our business
21 judgment. And, again, it's not about lowering any standard;
22 it's simply what standard applies to the applicable Code
23 section. And here, as discussed in the papers, the
24 applicable Code Sections are 363 and 365.

25 So unless Your Honor has any questions, that was

1 it for the Debtors and we appreciate your consideration and
2 ask that you would enter the proposed order.

3 THE COURT: Okay. Is there anybody else who would
4 like to be heard?

5 Mr. Merola?

6 MR. MEROLA: Your Honor, the U.S. Trustee's
7 reading of the ability of the estate to pay fees on behalf of
8 a third party consensually is very limiting. There are
9 literally -- the Chapter 11 case, especially a complicated
10 Chapter 11 case, is replete with situations where a Debtor,
11 in the interests of its business judgment, might pay fees to
12 a third party to facilitate the case.

13 We have fees for the DIP lender. We have work
14 fees for a DIP lender. We have work fees for a buyer of
15 assets over the stalking horse. We have fees paid as part of
16 the litigation settlement under 9019. None of those
17 invoke 327 and none of those invoke 503.

18 It's too limited of a reading and as the
19 Mallinckrodt Court explained, when the Debtor is consensually
20 making this payment -- requesting to make these
21 reimbursements in the exercise of its business judgment, 363
22 and 365 are the appropriate statutory standards.

23 THE COURT: Thank you, Mr. Merola.

24 Would anybody else like to be heard?

25 (No verbal response)

1 THE COURT: Okay. I hear no response. I'm ready
2 to rule.

3 I find that Sections 363 and 365 apply to the
4 motion and that if assuming an entry into the reimbursement
5 agreements are appropriate exercises of the Debtors' business
6 judgment, the motion should be granted.

7 And based on the evidence before me in the form of
8 Mr. Gund's declaration, I find that the Debtors have
9 articulated a sound business purpose justifying the relief
10 sought and that such relief is in the best interests of the
11 Debtors' estates. Specifically, in his declaration, Mr. Gund
12 testified that if the Debtors were able to reach consensus
13 with major stakeholders on the terms of the plan, the cases
14 will likely be shorter in duration, the parties will
15 eliminate the costs of unnecessary litigation, and it will
16 facilitate the confirmation of a plan. Reaching consensus
17 with the Ad Hoc Noteholder Group will avoid drawn-out
18 disputes -- will likely avoid drawn-out disputes between the
19 Debtors and a creditor body that is fragmented. But it also
20 substantially diminishes the risks and costs attendant to the
21 Debtors resulting from remaining in bankruptcy, thereby,
22 maximizing value for all creditors.

23 Mr. Gund also testified that it would be far more
24 difficult to negotiate Noteholder issues if they were not
25 acting as an organized group. I'd note that here, the Ad Hoc

1 Noteholder Group does represent about \$690 million worth of
2 notes and 65 percent of that group.

3 Also, the continued engagement of the Noteholder
4 Group advised by competent counsel and accomplished
5 professionals, in what has been a constructive process thus
6 far, is essential towards maximizing enterprise value and
7 recovery to creditors in a successful reorganization.

8 Mr. Gund further testified that if the relief
9 requested in the motion is denied and the Debtors are unable
10 to pay the professional fees of the Ad Hoc Noteholder Group,
11 the viability of that group may be jeopardized and the
12 coordinated efforts of the group might be lost.

13 This is more than an adequate record upon which to
14 find that the Debtors are appropriately exercising their
15 business judgment by entering into these agreements.

16 The objection raised by the United States Trustee
17 addresses issues raised only last year on appeal in the
18 Mallinckrodt case before then-District Court Judge Stark.
19 I've reviewed the Mallinckrodt decision very carefully and
20 agree with Judge Stark's reasoning. And for the reasons that
21 I agree with Judge Stark's reasoning, I also agree with the
22 reasoning of the Courts in Purdue Pharmaceuticals and
23 Bethlehem Steel that approved similar relief.

24 The relief sought in the motion is governed
25 by 363(b) and 365(a) and the prepetition agreement is an

1 executory contract that the Debtors may assume under 365(a).
2 And, in addition, 363(b)(1) permits the Debtors to enter into
3 the post-petition reimbursement agreements.

4 The United States Trustee's arguments are
5 certainly well presented and well taken, but I do disagree
6 that the governing Code Sections are 503(b)(3)(D)
7 and 503(b)(4) for the reasons that were described by the
8 Mallinckrodt Court.

9 While the United States Trustee posits that the
10 correct test is a substantial contribution test, I agree --
11 or I disagree. Substantial contribution is a creditor remedy
12 and it looks back in time to the contribution made by the
13 creditor to the case.

14 The Movant here is the Debtors who are seeking to
15 assume agreements and enter into an agreement outside the
16 ordinary course to pay the Noteholders' Group professional
17 fees. The relief the Debtors are seeking is prospective and
18 Sections 363 and 365 provide a basis for that relief.

19 The United States Trustee argues that Mallinckrodt
20 is distinguishable because there were multiple ad hoc groups
21 in that case, however, I don't read Mallinckrodt to apply
22 only when there are multiple groups. There is nothing in the
23 text or the logic of the Mallinckrodt opinion that is so
24 limiting.

25 Instead, the Court found that the business

1 judgment standard applied to the Debtors' request to pay the
2 fees of an Ad Hoc Group, even if the relief sought is
3 prospective, as is the case here.

4 I defer to the Debtors' business judgment that
5 paying the fees of the Ad Hoc Group is necessary to maintain
6 their participation and engagement of the Ad Hoc Noteholder
7 Group, particularly, because the case is working on very
8 tight timelines. Without the organized involvement of the Ad
9 Hoc Group, it seems that it would be difficult to ask for the
10 Debtors to organize -- sorry -- to negotiate a plan within
11 such tight timelines.

12 I also find it notable that the Committee has
13 negotiated certain revisions to the Debtors' proposed form of
14 order that are aimed at preventing duplicative work and
15 facilitating scrutiny of the time billed by the Ad Hoc
16 Group's professionals and, therefore, I am overruling the
17 United States Trustee's objection and granting the motion.

18 MR. GOLDEN: Thank you, Your Honor.

19 Your Honor, Mr. O'Neill and I will, unless you had
20 any other comments or questions or changes to the order, we
21 can upload the amended form of order that was attached to
22 the -- to our reply.

23 THE COURT: Yeah, I've reviewed the revised form
24 of order. I understand the changes, as I just described in
25 my ruling, and am prepared to enter the order once it's

1 uploaded.

2 MR. GOLDEN: Thank you, Your Honor.

3 And, again, thank you and your staff today for
4 accommodating all of us. We look forward to seeing you again
5 next week for our second day hearing.

6 THE COURT: I'll look forward to seeing you then,
7 as well.

8 Mr. O'Neill, anything else?

9 MR. JAMES O'NEILL: No, Your Honor. Just that --
10 well, there's two Mr. O'Neills here.

11 THE COURT: There's two Mr. O'Neills, yes.

12 MR. JAMES O'NEILL: So, for this Mr. O'Neill, I
13 would just say thank you and as my other friend Mr. O'Neill
14 previewed for the Court, we've been working through a number
15 of the second day matters with the Committee and also with
16 the U.S. Trustee, and those comments and negotiations have
17 been very productive towards our second day matters. So we
18 appreciate the Committee's input and the U.S. Trustee's input
19 to try to get through as many issues that we can with respect
20 to the second day hearing, which is one week from today. So,
21 we will continue in that effort to try to streamline those
22 proceedings as much as possible.

23 THE COURT: Great.

24 Is there anybody else that would like to be heard
25 before we adjourn?

1 (No verbal response)

2 THE COURT: I saw the other Mr. O'Neill pop on his
3 screen, but it might have been because I said his name.

4 MR. ANDREW O'NEILL: Yeah, no, I was just going to
5 say -- to thank Your Honor and the Court --

6 THE COURT: Oh, okay.

7 MR. ANDREW O'NEILL: -- so more "sand to the
8 beach," yep.

9 THE COURT: It's our pleasure.

10 Okay. Well, I wish you all a good afternoon.

11 And we are adjourned.

12 COUNSEL: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (Proceedings concluded at 11:31 a.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

September 7, 2023

William J. Garling, CET-543

Certified Court Transcriptionist

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